

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 11,865

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying his application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

FINDINGS OF FACT

The petitioner is a sixty-five-year man with a ninth-grade education. He has worked as a laborer for landscaping businesses, a sawmill, and for a pottery manufacturer.

The petitioner applied for Medicaid in May 1992, after suffering a heart attack. At the time he was hospitalized for nine days.

From all appearances, however, his recovery was quick and complete. A stress test performed in July, 1992, concluded that he had "excellent exercise tolerance".

In September, 1992, the petitioner's treating physician reported that he was "obviously disabled" from May until July, 1992, but that he was "cleared to return to work July 24, 1992."

The petitioner requested a fair hearing in the matter in March, 1993. The matter was continued for more than a year to allow the petitioner and his representative to obtain further medical evidence. During the pendency of this appeal the petitioner turned sixty-five (on March 22, 1994), making him eligible for medicaid on the basis of age as of that date. Thus, the appeal in this matter concerns a "closed period" of disputed eligibility based on disability from May, 1992 through March, 1994.

The only additional medical evidence submitted by the petitioner was the following letter from his treating physician to his representative dated November 22, 1993:

In response to your request for evaluation of functional capacity of [petitioner], he is known to have normal cardiac function by Echocardiogram 02/93, with no residual effects from his previous myocardial infarction. He is currently doing work around the house and yard of a light work category but I feel that with an exercise program he should at least be capable of medium work, and judging by what he was able to do in 1992 might even be capable of heavy work. He has told me in the office and it is documented in my notes that the reason he has not gone back to heavy work is not so much that he doesn't feel he could do it, but that no one will hire him.

Based on the above-cited medical evidence it is found that the petitioner was under a total disability only from May through July, 1992. Before and after this time he was capable of performing at least medium work. Based on the regulations (see infra) this dictates the conclusion that the petitioner was not disabled for any requisite consecutive twelve month period.

ORDER

The Department's decision is affirmed.

REASONS

Medicaid Manual Section M 211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

The regulations further provide that an individual of the petitioner's age, education, and work experience who is capable of performing "medium work" as it is defined in the regulations (20 C.F.R. § 416.967[c]) must be considered "not disabled" 20 C.F.R. § 404, Subpart P., Appendix II, Rule 203.03. [\(1\)](#)

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1. This conclusion is based on the petitioner's age, his "unskilled" work history, and "limited" education. See 20 C.F.R. §§ 416.963-965.